

AUG -4 2011

U.S. DISTRICT COURT  
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

DOCKET NO. 1:11CR10-MR-DLH

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

JAMES W. BAILEY, JR., )

Defendant. )

PETITION OF JAMES N. ST. CLAIR, )  
SR. )

**CONSENT ORDER FOR  
THIRD PARTY PETITION**

THIS MATTER is before the Court by consent of the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina and Petitioner James N. St. Clair, Sr.<sup>1</sup>, through counsel, pursuant to Fed. R. Crim. P. 32.2(c). The Government and Petitioner have consented to this Consent Order for Third Party Petition as a final adjudication and settlement of all matters with regard to the following properties (the "Subject Properties") covered by the Consent Order and Judgment of Forfeiture (Dkt. 16) filed herein:

The real property at 710 Three Rivers Road, Carrabelle, Florida, more particularly described as Instrument No. 200919002776 in the Franklin

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<sup>1</sup> Petitioner also indicates that he brings his Petition on behalf of his Individual Retirement Account and his Limited Liability Company.

County Register of Deeds<sup>2</sup> (the “Three Rivers Property”);

The real property at 505 Marine Street, Carrabelle, Florida, more particularly described as Instrument No. 200919004860 in the Franklin County Register of Deeds (the “Marine Street Property”);

The real property at 301 Avenue J, Carrabelle, Florida, more particularly described as Instrument 20109001517 in the Franklin County Register of Deeds (the “Avenue J Property”); and

The real property at 1212 N.E. 1<sup>st</sup> Street, Carrabelle, Florida, more particularly described in Instrument No. 201019002015 in the Franklin County Register of Deeds (the “First Street Property”).

The Government and Petitioner advise the Court that they have engaged in detailed discussions about the Subject Properties for the purposes of determining, if the Petition was denied in this action, the prospects of the Government obtaining equity from any or all of the Subject Properties via a forfeiture action. Pursuant to such discussions, the parties have **STIPULATED AND AGREED** and the **COURT FINDS AS FOLLOWS:**

1. Pursuant to this Consent Order for Third Party Petition, the Marine Street Property, the Avenue J Property, and the First Street Property should be dismissed from the Consent Order and Judgment of Forfeiture, the Three Rivers Road Property should remain in the Consent Order and Judgment of Forfeiture, and Petitioner

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<sup>2</sup> Copies of deeds on all properties are attached to the Verified Petition of James N. St. Clair, Sr. (Dkt. 72).

withdraws any and all claims to the Three Rivers Road Property.

2. This proposed Consent Order for Third Party Petition does not constitute a consent to or dispute of any legal arguments raised by any party. Instead, the parties agree to this Consent Order solely based on the understanding that, by consenting to the relief sought herein, Petitioner can avoid the burden of continuing litigation and retain the Marine Street, Avenue J, and First Street properties in which he has invested time and labor and the Government can avoid the burden of managing and attempting to maintain the Marine Street, Avenue J, and First Street properties, yet still obtain equity from the Three Rivers Property.

3. The parties stipulate and agree to the following facts about the Subject Properties:

a. The Three Rivers Property is a mobile home on approximately .3 acres of land. A February 24, 2011 Broker Price Opinion prepared for the Secret Service on the Three Rivers Property values the property at \$70,000. Petitioner indicates that he has spent money and personal labor improving the Three Rivers Property. The Three Rivers Property is free and clear of liens. The Three Rivers Property is a rental property.

b. The Marine Street Property is approximately .06 acres of vacant land with access to a river. A February 24, 2011 Broker Price Opinion prepared for

the Secret Service on the Marine Street Property values the property at \$85,000. The Marine Street Property is encumbered by a deed of trust and Petitioner has attached documentation to his Petition reflecting a \$202,269.99 loan payoff as of February 15, 2011. Petitioner Ameris Bank has filed a Petition (Dkt. 86) indicating its interest per the loan. Petitioner St. Clair indicates that he has spent money and personal labor improving the Marine Street Property. There is not equity in the Marine Street Property.

c. The Avenue J Property is a mobile home on approximately .23 acres of land. A February 24, 2011 Broker Price Opinion prepared for the Secret Service on the Avenue J Property values the property at \$25,000. Petitioner indicates that he has spent money and personal labor improving the Avenue J Property. The Avenue J Property is free and clear of liens but in need of significant further repairs.

The Avenue J Property is a rental property.

d. The First Street Property is a residence on approximately .05 acres<sup>3</sup> of land. A February 24, 2011 Broker Price Opinion prepared for Secret Service on the

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<sup>3</sup> There is a disparity between the acreage identified in the Broker Price Opinion (.05 acres) and the acreage identified in the Petition (.26 acres). Regardless, the Broker Price Opinion values the property at the First Street address at \$50,000 and Petitioner indicates in his Petition that he values the property at \$50,000. In addition, a \$50,000 sale price of a comparable property of .33 acres suggest that the \$50,000 value on the First Street Property, even assuming that the First Street Property is on .26 acres, is accurate. So, the disparity in estimates of acreage between the Broker Price Opinion and the Petition is immaterial.

First Street Property values the property at \$50,000. Petitioner indicates that he has spent money and personal labor improving the First Street Property. The First Street Property is free and clear of liens but in need of significant further improvements.

4. Petitioner waives any rights to further litigate his interests in all of the Subject Properties and the Government waives any rights to further litigate its interests in the Marine Street Property, the Avenue J Property, and the First Street Property. The parties agree that this Consent Order for Third Party Petition shall be in full settlement and satisfaction of all claims between the Government and Petitioner in this action to the Subject Properties and all claims resulting from the incidents or circumstances giving rise to the forfeiture of the Subject Properties.

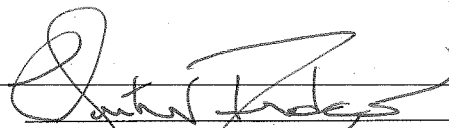
5. Petitioner waives his rights to obtain relief via a petition for remission or mitigation of the forfeiture but retains his rights to submit documentation of losses under the Mandatory Victim Restitution Act. Unless specifically directed by an order of the Court, Petitioner shall be excused and relieved from further participation in this action.

6. The Government agrees to release its lis pendens against the Marine Street Property, the Avenue J Property, and the First Street Property. Petitioner agrees to, to the extent necessary, execute documents to convey clear title to the Three Rivers Property to the United States and to otherwise implement this Consent Order.

**IT IS THEREFORE ORDERED THAT:**

1. Based upon the Petition of James N. St. Clair, Sr., individually and on behalf of his LLC and IRA, and the stipulations of the parties herein, the Marine Street Property, the Avenue J Property, and the First Street Property are hereby removed from the Consent Order and Judgment of Forfeiture, and Petitioner's Petition for the Three Rivers Road Property is dismissed with prejudice.
- 2 Each party shall bear its own costs, including attorneys fees.

Signed this 3 day of August, 2011.



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MARTIN K. REIDINGER  
UNITED STATES DISTRICT JUDGE

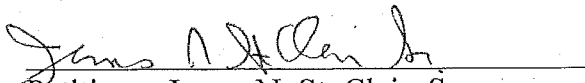
ON MOTION OF AND  
BY CONSENT OF THE PARTIES:

ANNE M. TOMPKINS  
UNITED STATES ATTORNEY



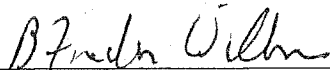
Benjamin Bain-Creed  
Assistant United States Attorney

Dated: 7/14/11



Petitioner James N. St. Clair, Sr.

Dated: 6-28-11



B. Frederic Williams, Esq.  
Attorney for Petitioner

Dated: 7/11/11